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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,664	10/29/2003	Rosalinda C. Sta-Maria	Sta-Maria-1	6832

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EXAMINER

PATEL, MITAL B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,664

Applicant(s)

STA-MARIA, ROSALINDA C.

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/29/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. There is a lack of antecedent basis for the following limitations:

- Claim 14, line 2, "the ninth and tenth hollow tubes"

Correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 8-11, 13, 16-18, 21-25, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Landis et al (US 5,687,715).

4. **As to claim 1**, Landis et al teaches an apparatus comprising a first hollow tube **120**; and a second hollow tube **122**; a first device **44** for attaching the first and second hollow tubes to an individual's head (**Please note that Col. 7, lines 28-32 discloses the nasal elements of Fig. 5 can be used with the device configuration of Fig. 1**); wherein a first end **50** of the first hollow tube can be inserted into a first nostril of an individual; wherein a first end **52** of the second hollow tube can be inserted into a second nostril of the individual; and wherein air can flow through the first hollow tube into the first nostril and through the second hollow tube into the second nostril (**See Col. 7, lines 44-54**).

5. **As to claim 2**, Landis et al teaches an apparatus wherein the first and second hollow tubes protrude out from a body portion **48** of a nose piece **46**.
6. **As to claim 3**, Landis et al teaches an apparatus wherein the body portion is hollow (**See Col. 7, lines 44-54**).
7. **As to claim 4**, Landis et al teaches an apparatus wherein the body portion is flexible (**See Col. 7, lines 45-46**).
8. **As to claim 5**, Landis et al teaches an apparatus wherein the body portion is cylindroid (**See Fig.5**).
9. **As to claim 8**, Landis et al teaches an apparatus further comprising a third hollow tube **16**; a fourth hollow tube **18**; and wherein the third and fourth hollow tubes protrude out from the body portion of the nosepiece.
10. **As to claim 9**, Landis et al teaches an apparatus wherein the first and second hollow tubes have a first diameter **50,52**; and the third and fourth hollow tubes have a second diameter (**See Fig. 1**); and wherein the first diameter is substantially smaller than the second diameter (**See Fig. 5 compared to Fig. 1 which shows diameter of 50,52 to be smaller than that of 16,18**).
11. **As to claim 10**, Landis et al teaches an apparatus further comprising a fifth hollow tube **32** and a sixth hollow tube **34**; and wherein the fifth and sixth hollow tubes are connected to the third and fourth hollow tubes, respectively (**See Fig. 1**).
12. **As to claim 11**, Landis et al teaches an apparatus further comprising a seventh hollow tube **14** and an eighth hollow tube **12**; wherein the seventh and eighth hollow tubes are connected to the fifth and sixth tubes respectively and the seventh and the

eighth hollow tubes are attached to a second device **24,30** for attaching the apparatus to the individual's head; and wherein the first device **44** is adapted to attach the apparatus at or near the upper lip of the individual and the second device is adapted to attach the apparatus at or near the forehead of the individual (**See Figs. 1 and 5**)

13. **As to claim 13**, Landis et al teaches a ventilator circuit (**See Col. 6, lines 2-9**) for supplying air to and through the first and second hollow tubes, and to the first and second nostrils.

14. **As to claim 16**, Landis et al teaches a method comprising the steps of attaching first **120** and second hollow tubes **122** to an individual's head; inserting a first end **50** of the first hollow tube into a first nostril of an individual; and inserting a first end **52** of the second hollow tube into a second nostril of the individual; and wherein the first and second hollow tubes protrude out from a body portion **48** of a nose piece **46** and wherein the first and second hollow tubes are attached to the individual's head through the nose piece, which is attached at or near the upper lip of the individual (**See Fig. 1**).

15. **As to claim 17**, Landis et al teaches a method further comprising connecting a third hollow tube **16** to the first hollow tube; and connecting a fourth hollow tube **18** to the second hollow tube; attaching the third hollow tube at or near the forehead of an individual; and attaching the fourth hollow tube at or near the forehead of an individual (**See Fig. 1**).

16. **As to claim 18**, Landis et al teaches a method wherein the body portion is flexible (**See Col. 7, lines 45-46**).

17. **As to claim 21**, Landis et al teaches a method further comprising

attaching third **16** and fourth hollow tubes **16** to the body portion of the nose piece; and wherein the third and the fourth hollow tubes protrude out from the body portion of the nose piece.

18. **As to claim 22**, Landis et al teaches a method wherein the first and second hollow tubes have a first diameter **50,52**; and the third and fourth hollow tubes have a second diameter (**that of 16 and 18**); and wherein the first diameter is substantially smaller than the second diameter (**See Fig. 5 compared to Fig. 1 which shows diameter of 50,52 to be smaller than that of 16,18**).

19. **As to claim 23**, Landis et al teaches a method further comprising attaching a fifth hollow tube **32** to the third hollow tube; and attaching a sixth hollow tube **34** to the fourth hollow tube.

20. **As to claim 24**, Landis et al teaches a method further comprising supplying air (**via air source depicted in Fig. 1**) to the fifth hollow tube and thereby to the third, and first hollow tubes and to the first nostril; and supplying air to the sixth hollow tube and thereby to the fourth, and second hollow tubes and to the second nostril.

21. **As to claim 25**, Landis et al teaches a method further comprising attaching a seventh hollow tube **14** to the fifth hollow tube; attaching an eighth hollow tube **12** to the sixth hollow tube; and attaching the seventh hollow tube and eighth hollow tubes at or near the individual's forehead (**See Fig. 1**).

22. **As to claim 27**, Landis et al teaches a method further comprising supplying air to and through the first and second hollow tubes, and to the first and second nostrils (**See Col. 7, lines 44-54**).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

25. Claims 6, 7, 12, 14, 15, 19, 20, 26, 28, and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Landis et al.

26. **As to claims 6, 7, 15, 19, 20, and 29**, Landis et al teaches essentially all the limitations except for the use of an flap portion and adhesive strip or first adhesive/second adhesive. It should be noted that instead Landis et al teaches a strap 26 and head band 24 with cushion 30 for the first device and second device to hold the apparatus at or near the lips and at or near the forehead. At

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the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide a nose flap with adhesive and a second adhesive because Applicant has not disclosed that a nose flap with adhesive provides an advantage, is used for a particular purpose, solves a stated problem or provides unexpected results over any other means including a strap and head band to hold the apparatus at or near the lips and at or near the forehead. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the strap and head band with cushion because its ability to hold the apparatus at or near the lips and at or near the forehead is not altered by the type of means used to support the apparatus on the user's head. Therefore, it would have been an obvious matter of design choice to modify Landis et al to obtain the invention as specified in claims 6, 7, 15, 19, 20, and 29.

27. **As to claims 12, 14, 26, and 28**, Landis et al teaches essentially all of the limitations except for the apparatus further comprising ninth and tenth hollow tubes. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide ninth and tenth hollow tubes, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. I v. Bemis Co.*, 193 USPQ 8.


Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6769432, US 6533984, US 6439234, US 6422240, US 6012455, US 5975077, US 5752510, US 5437267, US 5193532, US 4821736, US 4782832, US 2003/0200970, and US 2003/0047185.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 9/18/04
Mital B. Patel
Examiner
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